

White House Regulatory Cap for Fiscal Year 2017 (Two for One Requirements): Natural Resources Defense Council U.S. District Court Challenge



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Arkansas Environmental, Energy, and Water Law Blog

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As noted in a previous blog post, the White House issued an Executive Order on January 30, 2017, titled “Reducing Regulation and Controlling Regulatory Cost” (“EO”). ([See blog post here.](#))

Section 2 for the EO provided in part:

Unless prohibited by law, whenever an executive department or agency . . . publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

The Natural Resources Defense Council, Inc. and a number of other organizations (collectively “NRDC”) filed a Complaint for Declaratory and Injunctive Relief on February 8th in the United States District Court for the District of Columbia challenging the constitutionality of the EO.

The Complaint also alleges that various federal agencies cannot comply with the EO without violating the laws under which they operate and that it will block or force the quick repeal of regulations needed to protect public health, safety and the environment.

The specific causes of action in the Complaint include:

- Violation of separation of powers
- Violation of the Take Care Clause
- Non-statutory review of Ultra Vires Actions by agency officials
- Non-statutory review of Ultra Vires Actions by Director of Office of Management and Budget
- Violation of the Administrative Procedures Act

[A copy of the Complaint can be downloaded here.](#)